

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In Re STERLING FOSTER & CO., Inc., MDL Docket No. 1208
SECURITIES LITIGATION
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**MEMORANDUM OF
DECISION AND ORDER
99 CV 2789 (ADS) (MLO)**

ROBERT LEVITT for himself and as custodian
for Richard Levitt and Monica Levitt,
ROBERT RICE, STEPHEN G. SIBEN,
STEPHEN STOBEHN, STANLEY
VELTKAMP, PHILIP C. VITANZA for himself
and Elizabeth Vitanza and Luke Vitanza, JOHN T.
WHITE, GUY V. WOOD, CARL ZANDER, JR.,
and TED M. and KATHRYN N. JONES,
as Trustees,

Plaintiffs,

-against-

BEAR STEARNS & CO, INC., and BEAR
STEARNS SECURITIES CORP.,

Defendants.

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THOMAS ROGERS, et al., 97 CV 189 (ADS) (MLO)

Plaintiffs,

-against-

STERLING FOSTER & CO., INC., et al.,

Defendants. Consolidated With:

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LEO W. SMITH, et al.,

Plaintiffs,

-against-

97 CV 610 (ADS) (MLO)

STERLING FOSTER & CO., INC., et al.,

Defendants.

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WILLIAM V. WRIGHT, et al.,

Plaintiffs,

-against-

97 CV 1689 (ADS) (MLO)

STERLING FOSTER & CO., INC., et al.,

Defendants.

-----X

MICHAEL REYNOSA, et al.,

Plaintiffs,

-against-

97 CV 3253 (ADS) (MLO)

STERLING FOSTER & CO., INC., et al.,

Defendants.

-----X

ANDREW PETIT, et al.,

Plaintiffs,

-against-

97 CV 3775 (ADS) (MLO)

STERLING FOSTER & CO., INC., et al.,

Defendants.

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APPEARANCES:

MILBERG WEISS BERSHAD HYNES & LERACH, LLP

Co-Lead Counsel for the Plaintiffs
One Pennsylvania Plaza, 49th Floor
New York, N.Y. 10199

By: Robert A. Wallner, Esq.
Kim Levy, Esq., Of Counsel

GOODKIND LABATON RUDOFF & SUCHAROW, LLP

Co-Lead Counsel for the Plaintiffs
100 Park Avenue
New York, N.Y. 10017-5563

By: Lou Gottlieb, Esq.
Ira A. Schochet, Esq.
Jonathan M. Plasse, Esq.
David Goldsmith, Esq.
James M. Strauss, Esq., Of Counsel

RATHMAN, FRANCIS & HOLLAND, LLC

Co-Lead Counsel for Claims Against Advanced Voice Technologies, Inc., Com/Tech
Communications Technologies, Inc. & Embryo Development Corporation
1031 Lami
St. Louis, MO 63104

By: Steven J. Stolze, Esq., Of Counsel

KIRBY McINERNEY & SQUIRE, LLP

Co-Lead Counsel for Claims Against Lasergate Systems, Inc. & ML Direct, Inc.
830 Third Avenue
New York, N.Y. 10022

By: Peter S. Linden, Esq.
Lewis S. Sandler, Esq., Of Counsel

MORLEY AND TRAGER

Attorneys for the Levitt Plaintiffs
230 Park Avenue
New York, NY 10169

By: Leslie Trager, Esq., Of Counsel

LAW OFFICES OF JOSEPH D'ELIA

Counsel for the Defendant Sterling Foster & Company, Inc.
464 New York Avenue, Suite 200
Huntington, N.Y. 11743

By: Joseph D'Elia, Esq., Of Counsel

UNGARETTI & HARRIS

Counsel for the Defendant Sterling Foster & Company, Inc.
3500 Three First National Plaza
Chicago, ILL 60602

By: Miriam G. Bahcall, Esq.
Rawn Howard Reinhard, Esq., Of Counsel

MORVILLO, ABRAMOWITZ, GRAND, IASON & SILBERBERG, P.C.

Counsel for the Defendant Randolph Pace
565 Fifth Avenue
New York, N.Y. 10017

By: Edward M. Spiro, Esq., Of Counsel

ALAN M. NOVICH

Defendant Pro Se
Inmate Reg. No. 45537-054
Allenwood FPC
P.O. Box 1000
Montgomery, PA 17752

CHOATE, HALL & STEWART

Counsel for the Defendants Com/Tech Communication Technologies, Inc.,
ML Direct, Inc., and Nancy G. Shalek
Exchange Place, 53 State Street
Boston, MA 02109

By: Jeremiah T. O'Sullivan, Esq.
John R. Baraniak, Jr., Esq., Of Counsel

ZUCKERMAN, SPAEDER, GOLDSTEIN, TAYLOR & KOLKER, LLP

Counsel for the Defendants Com/Tech Communication Technologies, Inc.,
ML Direct, Inc., and Nancy G. Shalek

1114 Avenue of the Americas

New York, N.Y. 10036

By: Lisa A. Cahill, Esq., Of Counsel

BONDY & SCHLOSS, LLP

Counsel for the Defendant Lasergate Systems, Inc.

60 East 42nd Street, 37th Floor 10165-0150

New York, N.Y. 10165-0150

By: Joel M. Wolosky, Esq., Of Counsel

ARNOLD & PORTER

Counsel for the Defendants Bear, Stearns & Co., Inc., and Bear, Stearns Securities
Corp.

399 Park Avenue

New York, N.Y. 10022

By: Peter L. Zimroth, Esq.

Michael Schissel, Esq.

Kerry Dziubek, Esq.

David A. Weintraub, Esq., Of Counsel

555 Twelfth Street, N.W.

Washington, D.C. 20004-1202

By: Stephen M. Sacks, Esq.

Scott B. Schreiber, Esq.

James L. Cooper, Esq., Of Counsel

KATTEN MUCHIN ZAVIS ROSENMAN

Counsel for the Defendant Richard Harriton

575 Madison Avenue

New York, N.Y. 10022

By: Howard Wilson, Esq.

Joseph Zuckerman, Esq., Of Counsel

CAREY & ASSOCIATES

Counsel for the Defendants Roger Buoy, Tony Swash, Terence McAuley, and
Armando Araujo

230 Park Avenue, Suite 2240

New York, N.Y. 10169-2240

By: Michael Q. Carey, Esq.
Miriam A. Widmann, Esq., Of Counsel

COVINGTON & BURLING

Counsel for the Defendant Bear, Stearns Securities Corp.
1330 Avenue of the Americas
New York, N.Y. 10019

By: P. Benjamin Duke, Esq., Of Counsel

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

Counsel for Defendant Embryo Development
Four Times Square
New York, N.Y. 10036

By: Samuel Kadet, Esq., Of Counsel

WILMER, CUTLER & PICKERING

Counsel for the Defendant Michael Krasnoff
399 Park Avenue
New York, N.Y. 10022

By: Richard Bierschbach, Esq.
Andrew D. Kaiser, Esq., Of Counsel

MILBANK, TWEED, HADLEY & MCCOY

Counsel for the Defendants Bernstein & Wasserman, LLP., Hartley Bernstein &
Steven Wasserman
1 Chase Manhattan Plaza
New York, N.Y. 10005

By: Scott Edelman, Esq., Of Counsel

ROGERS & WELLS

Counsel for the Defendants Bernstein & Wasserman, LLP, Hartley Bernstein &
Steven Wasserman
200 Park Avenue
New York, N.Y. 10166

By: David Meister, Esq., Of Counsel

GOLDMAN & HAFETZ

Counsel for the Defendant Michael Lulkin
500 Fifth Avenue

New York, N.Y. 10036

By: Susan Necheles, Esq., Of Counsel

JEREMY LEE SLOVIK

Defendant Pro Se

Royal Hutton Securities Hdq.
1499 West Palmetto Park Road
Boca Raton, F.L. 33486

ADAM LIEBERMAN

Defendant Pro Se

FRANK MONROIG

Defendant Pro Se

TIMOTHY J. MATTHEWS

Defendant Pro Se

MATTHEW HAWLEY

Defendant Pro Se

JASON MAROWSKI

Defendant Pro Se

ANDREW TURSI

Defendant Pro Se

CRAIG KELLERMAN

Defendant Pro Se

MICHAEL SABATO

Defendant Pro Se

ROBERT J. PAULSON

Defendant Pro Se

SPATT, District Judge.

This class action involves allegations by the Plaintiffs that the Defendants

made misstatements and omissions and were engaged in market manipulation with respect to six public offerings. The detailed factual background of this dispute is set forth in the Court's decisions and orders, including the following: In re Sterling Foster & Co. Sec. Litig., 222 F. Supp. 2d 216 (E.D.N.Y. 2002); Levitt v. Bear Stearns & Co. (In re Sterling Foster & Co.), 222 F. Supp. 2d 312 (E.D.N.Y. 2002); the Second Circuit's August 13, 2003 decision, Levitt v. Bear Stearns & Co., 340 F.3d 94 (2d Cir. 2003); Levitt v. Bear Stearns & Co. (In re Sterling Foster & Co. Sec. Litig.), No. 99 cv 2789, 2006 U.S. Dist. LEXIS 80861 (E.D.N.Y. Oct. 31, 2006); and Levitt v. Rogers, No. 06-5298, 2007 U.S. App. LEXIS 29362 (2d Cir. Dec. 18, 2007). Familiarity with the previous decisions is presumed.

On May 23, 2006, the Lead Plaintiffs and Defendants Michael Krasnoff, Nancy G. Shalek, Lasergate Systems, Inc., Bear, Stearns & Co., Inc., Stearns Securities Corp. and Richard Harriton (the "Bear Stearns Defendants") (collectively, the "Settling Defendants") executed a Stipulation and Agreement of Settlement ("Settlement Agreement"). The Settlement Agreement provided for a total cash settlement of \$1,400,000 which resolved all remaining claims that were not dismissed or settled pursuant to the 2002 partial settlement agreement. The 2002 partial settlement agreement provided for a cash settlement of \$2,200,000 and Lead Counsel were awarded fees of 25% of that settlement amount. On October 31, 2006, this Court approved the Settlement Agreement.

In its most recent December 18, 2007 Order, the Second Circuit vacated this Court's September 30, 2004 decision denying a motion by Robert Levitt, Robert Rice, Stephen G. Siben, Stephen Strobehn, Stanley Veltkamp, Philip C. Vitanza, John T. White, Guy V. Wood, Carl Zander, Jr., and Ted M. and Kathryn Jones (the "Levitt Plaintiffs") to be appointed as lead plaintiffs. The Second Circuit also vacated this Court's October 31, 2006 decision accepting the settlement and plan of allocation.

The Second Circuit found that the Levitt Plaintiffs had the largest financial interest in the outcome of the case, after all claims against Bear Stearns by Plaintiffs other than the ML Direct class and the Applewoods class were dismissed as time barred. The Second Circuit found that it would have been appropriate for this Court to appoint the Levitt Plaintiffs as lead plaintiffs at that time. The Second Circuit further determined that the settlement was not fair because there was insufficient evidence of Bear Stearns' wrongdoing. The Second Circuit also determined that further discovery is necessary "to provide the parties and the court with information sufficient to make a determination regarding whether the proposed settlement is fair and reasonable."

Levitt, 2007 U.S. App. LEXIS at *6.

On December 28, 2007, the Levitt Plaintiffs moved to be appointed lead plaintiffs and moved for the appointment of their attorney, Leslie Trager, as lead counsel. The Levitt Plaintiffs note that because they are the only group to have appealed from the proposed settlement, only the ML Direct case remains pending as a

result of the Second Circuit's Decision. The Levitt Plaintiffs contend that because they have the largest financial interest, they should be appointed lead plaintiffs.

Although the Current Lead Plaintiffs filed a response to the Levitt Plaintiffs' motion, they note that in consideration of the Second Circuit's Decision, they do not oppose the motion, as long as certain settlements remain undisturbed. Accordingly, it is hereby

ORDERED, that the Levitt Plaintiffs' motion to be appointed lead plaintiffs is **GRANTED**; and it is further

ORDERED, that the Levitt Plaintiffs' motion for the appointment of Leslie Trager, Esq., as lead counsel is **GRANTED**; and it is further

ORDERED, that the parties are directed to appear in courtroom 1020 on February 19, 2008 at 10:00 am for a status conference; and it is further

ORDERED, that lead counsel is directed to serve a copy of this Order on all parties on or before February 14, 2008.

SO ORDERED.

Dated: Central Islip, New York
February 12, 2008

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge